

ILLINOIS POLLUTION CONTROL BOARD
July 30, 1992

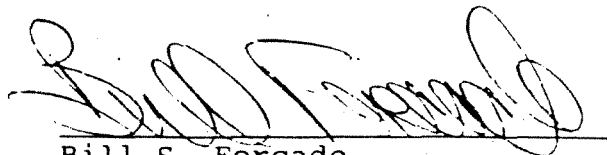
SHEREX CHEMICAL COMPANY, INC.,)
)
 Petitioner,)
)
v.) PCB 91-202
) (Permit Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
 Respondent.)

CONCURRING OPINION (by B. Forcade):

I respectfully concur in today's action. I support the majority's conclusion that because the Agency has entered into a consent decree agreeing to the corrective action measures to be performed at the SRAPL HPA reactor site as a result of the release of cadmium and copper, it is barred from imposing different corrective actions at that site through the permitting process. If the Agency were free to impose totally new conditions, then the consent agreement language, "they hereby release each other...from any and all claims of any party to the disposal of spent nitric acid wash from the HPA reactor at the Mapleton site, including all claims which were raised or which could have been raised with respect thereto." would be meaningless.

However, I am less certain that the Agency could not impose corrective action measures developed under the consent agreement as valid permit conditions. In other words, can the Agency duplicate the consent agreement corrective action measures in the permit?

This issue is of significance because permit conditions are enforceable by other people. Usually, consent agreements are only enforceable by the parties. Has the Agency negotiated away the right of USEPA and the public to enforce clean up at the SRAPL HPA reactor site as a result of the release of cadmium and copper?



Bill S. Forcade
Board Member

0135-0143

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was filed on the 3rd day of August, 1992.

Dorothy M. Gunn

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0135-0144